

IN THE HIGH COURT OF ORISSA AT CUTTACK

WP(C) No. 3565 of 2022

***Harihara Pradhan and
another***

....

Petitioners

Mr. Biplaba P. B. Mohanty, Advocate

-versus-

***Authorized Officer, SBI,
Stressed Assets Recovery
Branch and Others***

....

Opp. Parties

Mr. D. P. Sarangi, Advocate for Bank

**CORAM:
JUSTICE JASWANT SINGH
JUSTICE M. S. RAMAN**

**ORDER (ORAL)
09.03.2022**

Order No.

- 02.** **1.** This matter is taken up by virtual/physical mode.
- 2.** The brief facts of the case are that the Petitioners (two brothers) are the successful bidders/auction purchasers in the auction conducted by the Opposite Party No.1 i.e. Authorized Officer of the Bank on 21.09.2021 with a bid amount of Rs.1,08,38,000/-.
- 3.** It is the case of the Petitioners that they have already deposited Rs.27,09,500/- i.e. 25% of the bid amount as on 22.09.2021 with an offer to deposit the rest 75% amount in order to get the sale certificate and possession of the auctioned property.

4. The Opposite Party No.1-Bank vide its letter dated 11.01.2022 informed the Petitioners that DRT, Cuttack vide interim order S.A. No. 78/2018 dated 20.09.2021 has allowed the sale but deferred the confirmation thereof till 07.10.2021. The said order of the DRT dated 20.09.2021 is reproduced below for ready reference:-

“Time extended for filing objections in I.A. No.307 of 2021 and I.A. No.308 of 2021 and counter in S.A. posted to 07.10.2021. Since the auction is going to be held on tomorrow, the Respondent-Bank is directed to go ahead with sale but confirmation of sale be deferred till 07.10.2021. All other I.A.s are also posted to 07.10.2021.”

The Opposite Party No.1-Bank further asked the Petitioners to deposit the rest of the balance amount as there is no restriction on the same. However, it provided that as the matter has not yet been listed before the DRT, the request of the Petitioners to grant the sale certificate cannot be allowed.

5. The Petitioners have approached this Court with a prayer to direct the Opposite Party No.1-Bank to issue the sale certificate in favour of the Petitioners after receiving the remaining 75% of the bid amount within a stipulated period of time.

6. It is the contention of the Petitioners that the Opposite Party No.1-Bank is free to issue sale certificate and grant possession of the auctioned

property as the date of hearing (07.10.2021) mentioned by DRT has already expired.

7. Heard both the counsel for the parties at length.

8. It is relevant to refer to Rule-9 of Security Interest (Enforcement) Rules, 2002 (in short 'the Rules, 2002). Clause 9(3) of the Rules, 2002 mandates the auction purchasers to deposit 25% of the amount of sale price (inclusive of the earnest money, if any) on the same day or by not later than the next day to the authorized officer conducting the sale. Further, Clause 9(4) of the Rules, 2002 direct the purchasers to pay the remaining amount on or before the 15th day from the confirmation of sale or on such agreed extended period (not beyond three months). Also, Clause 9(5) of the Rules, 2002 provide that any default under Clause 9(4) of the Rules, 2002 made by the auction purchaser shall result in forfeiting of the deposit made under Clause 9(3) of the Rules, 2002 by the auction purchaser and also to the claim on the secured property or to any part of the sum for which it may be subsequently sold.

9. In the present case, the Petitioners had deposited 25% of the bid amount as on 22.09.2021. The law stipulates that he is required to deposit the remaining 75% not beyond the next three months i.e. by 22.12.2021. Despite the inaction by the Petitioners, the

amounts deposited by him have not been forfeited and thereby no prejudice is caused to his interest.

10. We agree with the submission made by the Bank that the sale confirmation cannot be issued in view of the interim order passed by DRT, Cuttack dated 20.09.2021. It is undisputed that the said interim order of the DRT, Cuttack has not been vacated or modified. Therefore, judicial proprietary demands no interference from this Court. However, the Petitioners are free to deposit the rest 75% of the amount and seek their remedy by impleading themselves in S.A. No.78 of 2018.

11. Hence, the present writ petition is disposed of with the liberty to the Petitioners to approach the appropriate forum or implead themselves in appropriate proceedings.

(Jaswant Singh)
Judge

(M. S. Raman)
Judge

March 9th 2022
Cuttack